

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

_____x
: **In re CONVERIUM HOLDING AG** : **Case No. 04 Civ. 7897 (DLC)**
: **SECURITIES LITIGATION** :
: _____x

~~Proposed~~ ⁷ **ORDER PRELIMINARILY
CERTIFYING CLASS FOR SETTLEMENT PURPOSES
AND PRELIMINARILY APPROVING PROPOSED SETTLEMENT
WITH ZURICH FINANCIAL SERVICES**

WHEREAS Lead Plaintiffs the Public Employees' Retirement System of Mississippi and Avalon Holdings, Inc., on behalf of the Class (as defined below), and Zurich Financial Services ("ZFS") have applied to the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure for an order approving the partial settlement of the above-captioned litigation in accordance with the Stipulation of Settlement on file herein (the "Stipulation"), which, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of the above-captioned action (the "Action") against ZFS (the "Settlement") and for dismissal of the Action with prejudice, and upon the terms and conditions set forth in the Stipulation, as against (i) ZFS, (ii) certain directors of Converium Holding AG ("Converium"), namely, Terry G. Clarke, Peter C. Colombo, George F. Mehl, Jurgen Foerterer, Anton K. Schnyder, Derrell J. Hendrix, and George G.C. Parker (the "Director Defendants"), and (iii) the underwriters of the initial

public offering of Converium securities that took effect on or about December 11, 2001, and was completed in January 2002 (the “Underwriters of the Converium IPO”); and

WHEREAS the Court has read and considered the Stipulation and the exhibits annexed thereto;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:¹

1. **Preliminary Class Certification.** Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(3), the Court preliminarily certifies the following Class solely for settlement purposes, and only as to ZFS:

All persons, entities, or legal beneficiaries or participants in any entities who, during the period from December 11, 2001 through September 2, 2004, inclusive (the “Class Period”), purchased or otherwise acquired Converium’s common stock and/or American Depository Shares (“ADSs”) (collectively, “Converium Securities”). Excluded from the Class are:

- a. such persons or entities who submit valid and timely requests for exclusion from the Class;
- b. such persons or entities who, while represented by counsel, settled an actual or threatened lawsuit or other proceeding against the Releasees and released the Releasees from any further Claims concerning their purchase or other acquisition of Converium common stock or ADSs during the Class Period, and
- c. such persons or entities who are or were: the ZFS Releasees; Converium; Director Defendants; Officer

¹ Terms not defined in this Order shall have the definitions ascribed to them in the Stipulation.

Defendants; Family Members of any Officer or Director Defendant; Underwriter Defendants; Underwriters of the Converium IPO; any entity in which the ZFS Releasees have or had a Controlling Interest; the legal representatives, heirs, executors, successors, or assigns of any person or entity excluded pursuant to this subparagraph 1.c, or any current or former directors or officers of the ZFS Releasees or of an entity in which the ZFS Releasees had a Controlling Interest.

2. **Preliminary Class Findings.** For purposes of the partial settlement of this action, and only for such purposes, and subject to the terms of the Stipulation, the Court preliminarily finds that the requirements of Fed. R. Civ. P. 23(a) and 23(b)(3), the Private Securities Litigation Reform Act (the “PSLRA”), and any other applicable laws appear to be satisfied, in that:

- a. The Class appears to be so numerous that joinder of all members would be impractical;
- b. Lead Plaintiffs and additional plaintiff and putative class representative Louisiana State Employees’ Retirement System (collectively, “Plaintiffs”) have alleged against ZFS certain questions of fact and law that appear to be common to all members of the Class;
- c. Based on Lead Plaintiffs’ allegations that ZFS engaged in uniform misconduct affecting all members of the Class, Lead Plaintiffs’ claims appear to be typical of those of the Class Members;
- d. Lead Plaintiffs appear to be capable of fairly and adequately protecting the interests of the members of the Class in their claims against ZFS, in that

- (i) Lead Plaintiffs' interests appear to be consistent with those of the Class Members, and
- (ii) Lead Counsel appear to be able and qualified to represent the Class, and

e. For settlement purposes, questions of law and/or fact common to members of the Class as to ZFS appear to predominate over any such questions affecting only individual Class Members, and a class action appears to be superior to all other available methods for the fair and efficient resolution of the Action as to ZFS. In making these preliminary findings for settlement purposes, the Court has considered, among other things, (i) the Class Members' interest in individually controlling the prosecution or defense of separate actions involving ZFS, (ii) the impracticability or inefficiency of prosecuting or defending separate actions involving ZFS, (iii) the extent and nature of any litigation concerning these claims already commenced as to ZFS, and (iv) the desirability of concentrating the litigation of the claims as to ZFS in a particular forum.

3. **Preliminary Appointment of Class Representatives.** Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for purposes of the Settlement only, Lead Plaintiffs are preliminarily certified as the Class Representatives.

4. **Preliminary Findings on Proposed Settlement.** The Court preliminarily finds that the proposed Settlement evidenced by the Stipulation is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to the Class and scheduling a hearing for further review of the proposed Settlement. By the time of that hearing, Lead Plaintiffs and Lead Counsel will have had the additional benefit of further discovery, and the Court will have had the benefit of any submissions from Class Members concerning the proposed Settlement.

5. **Converium Stock-Transfer Information.** Within ^{January (20)} ~~fifteen (15)~~ days after the date of this Order, Converium and/or its stock-transfer agent(s) shall provide to Lead Counsel all necessary information to enable Lead Plaintiffs or their agents to provide notice to potential Class Members about the proposed settlement of the Action as to ZFS. Such information shall include, at a minimum, all available names and addresses of potential Class Members.

6. **Notice to Class Members.** The parties to the Stipulation shall present to the Court a proposed Notice Program that will include the forms of notices to be delivered to potential members of the Class (the "Individual Notice") and to be published (the "Summary Notice"), and will set forth the manner of delivering and publishing such notices. The proposed Notice Program shall be submitted to the Court by the later of September 24, 2007 or two weeks after Lead Counsel receive Converium's stock-transfer information, at which time the Court will preliminarily determine whether providing notice to potential members of the Class pursuant to the proposed Notice Program meets the requirements of Rule 23 of the Federal Rules of Civil Procedure, the PSLRA, the Constitution of the United States, and any other applicable law, and whether such notice is the best notice practicable under the circumstances and constitutes due and sufficient notice to all persons entitled to such notice. The Court then will issue a Notice Order setting a date for the Fairness Hearing.

7. **Communications with Class Members.** The ZFS Releasees shall maintain the right to communicate orally and in writing with, and respond to inquiries from, potential Class Members, including (without limitation): (i) communications

between potential Class Members and representatives of the ZFS Releasees whose responsibilities include investor relations, to the extent such communications are initiated by potential Class Members, *provided that*, in such circumstances the ZFS Releasees shall use their best efforts to direct such potential Class Members to the Claims Administrator or to the Claims Administrator's website, or to Lead Counsel;

(ii) communications as may be necessary to implement the terms of the Stipulation, and

(iii) communications as may be made in the conduct of the ZFS Releasees' business.

8. **Administration.**

a. **Retention of Notice Administrator.** The Court approves Lead Plaintiffs' selection of Hilsoft Notifications, d/b/a Hilsoft, Inc. ("Hilsoft"), to design the proposed Notice Program, including the forms of Individual Notice and Summary Notice, to serve as the notice administrator (the "Notice Administrator") for the purposes of, among other things, translating the Individual Notice and Summary Notice and other documents, placing the Summary Notice in appropriate media vehicles, and providing to the Court analyses of the overall effectiveness of the Notice Program. In effectuating the Notice Program, the Claims Administrator (defined below) shall coordinate its efforts with Todd Hilsee and other members of Hilsoft.

b. **Retention of Claims Administrator.** The Court approves Lead Plaintiffs' selection of The Garden City Group, Inc. to serve as claims administrator (the "Claims Administrator") for the purposes of, among other things, effectuating the Individual Notice and website aspects of the Notice Program, processing Proof of Claim forms, and distributing payments to Class Members from the Net Settlement Fund.

c. **Notice and Administration Costs and Taxes.** As provided in the Stipulation, (i) all reasonable costs incurred in identifying and notifying Class Members, as well as administering the Settlement, shall be paid as set forth in the Stipulation without further order of the Court, and (ii) Lead Counsel or the Claims Administrator or their agents are authorized and directed to prepare any tax returns required to be filed on behalf of or in respect of the Settlement Fund and to cause any taxes due and owing to be paid from the Settlement Fund, and to otherwise perform all obligations with respect to taxes and any reporting or filings in respect thereof as contemplated by the Stipulation, without further order of the Court.

9. **Exclusion from Class.** All potential Class Members who wish to exclude themselves from the Class must submit a timely, written request for exclusion to the Claims Administrator. The exclusion request must include the following information about the potential Class Member: (i) name, (ii) address, (iii) telephone number, (iv) number of Converium Securities purchased or otherwise acquired or sold, (v) prices paid or value at receipt, and (vi) the date of each transaction. To be valid, any request for exclusion must be in writing, must contain all the required information, and must be received by the Claims Administrator, as stated in the Individual Notice and the Summary Notice, ~~no later than twenty (20) days before the date set for the Fairness~~ *dlc* ~~Hearing.~~ If the proposed Settlement is approved, any potential Class Member who has not filed a timely and valid written request for exclusion from the Class (and his, her, or its heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 201.1-02.b), and assigns) shall be bound by the release provided for in the

Stipulation and by all proceedings, orders, and judgments in the Action, even if he, she, or it has pending, or subsequently initiates, any litigation, arbitration, or other proceeding, or has any other Claim, against any or all of the Releasees relating to any of the Released Plaintiffs' Claims. At or before the Fairness Hearing, the Settling Parties shall provide to the Court a list of the persons and entities, if any, who have validly and timely requested exclusion from the Class. Persons requesting exclusion from the Class shall not be entitled to receive any payment out of the Net Settlement Fund.

10. **Preliminary Injunction**. Pending final determination of whether the Settlement should be approved,

a. All Plaintiffs and Class Members (and their heirs, executors, administrators, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1-02.b), and assigns) who have not validly and timely requested exclusion from the Class are preliminarily enjoined from filing, commencing, prosecuting, intervening in, participating in as class members or otherwise, or receiving any benefits or other relief from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding or order in any jurisdiction, as to the Releasees based on or relating in any way to (i) the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or (ii) the Released Plaintiffs' Claims; and

b. All persons are preliminarily enjoined from filing, commencing, or prosecuting any other lawsuit as a class action (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of any Class Members as to the Releasees, if such other

lawsuit is based on or relates in any way to the claims and causes of action, or the facts and circumstances relating thereto, in the Action and/or the Released Plaintiffs' Claims.

11. **Objections.** Any Class Member who has not filed a request for exclusion from the Class and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must serve on Lead Counsel and ~~ZFS's Counsel~~ and file with the Court a statement of his, her, or its objection(s), as well as the specific reason(s), if any, for each such objection, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of such objection. Any objection also must include the following information about the Class Member: (i) name, (ii) address, (iii) telephone number, (iv) number of Converium Securities purchased or otherwise acquired or sold, (v) prices paid or value at receipt, and (vi) the date of each transaction. The Class Member must provide the statement to each of the following:

Lead Counsel:

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ZFS's Counsel:

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Any such objection must be served on Lead Counsel ~~and ZFS's Counsel~~ and filed with the Court so that ^{as provided in the Individual Notice} it is received no later than twenty (20) days before the date set for the ~~Fairness Hearing~~. If a Class Member hires an attorney (at his, her, or its own expense) to represent him, her, or it for the purposes of objecting (or for reviewing discovery materials pursuant to paragraph 13 below), such attorney must serve a notice of appearance on Lead Counsel ~~and ZFS's Counsel~~ (at the addresses set out above) and file it with the Court so that it is received no later than twenty (20) days before the date set for the Fairness Hearing. Any Class Member who does not make an objection in the time and manner provided ^{in the Individual Notice} shall be deemed to have waived such objection, shall be bound by the terms of the Stipulation and the Order and Final Judgment, and shall be foreclosed forever from making any objection to the fairness or adequacy of the proposed Settlement unless otherwise allowed by the Court.

12. **Appearance at Fairness Hearing.** Any Class Member who files and serves a timely, written objection in accordance with paragraph 11 above may also appear at the Fairness Hearing either in person or through counsel retained at the Class Member's expense. Class Members or their attorneys intending to appear at the Fairness Hearing must serve a notice of intention to appear, setting forth, among other things, the name, address, and telephone number of the Class Member (and, if applicable, the name, address, and telephone number of the Class Member's attorney), on Lead Counsel ~~and ZFS's Counsel~~ (at the addresses set forth above) and file it with the Court ~~so that the notice is received no later than twenty (20) days before the date set for the Fairness Hearing.~~ Any Class Member who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except for good cause shown.

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13. **Access to Discovery Materials.** Upon agreeing to be bound by the Confidentiality Order, a Class Member (and his, her, or its counsel (if any)) will be provided access, at his, her, or its own expense, to the discovery materials in the Action for the sole purpose of assessing the Settlement. The discovery materials in the Action shall be made available for inspection at the offices of Lead Counsel in New York, New York, for a period of no more than fifteen (15) days from the date on which a request of access is made and, in any event, no later than five (5) business days before the Fairness Hearing.

14. **Filing of Papers.** All papers in support of the Settlement shall be filed at least seven days before the Fairness Hearing, with two courtesy copies sent to the Court's Chambers.

15. **Qualified Settlement Fund.** The Escrow Account into which the Settlement Amount will be paid shall be considered a Qualified Settlement Fund *in custodia legis* of the Court, in accordance with Treas. Reg. §§ 1.468B-0 through 1.468B-5.

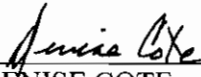
16. **Termination of Settlement.** This Order shall become null and void, and shall be without prejudice to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if (i) the proposed Settlement is not finally approved by the Court, or does not become Final, pursuant to the terms of the Stipulation, or (ii) the proposed Settlement is terminated in accordance with the terms of the Stipulation or does not become effective as required by the terms of the Stipulation for any other reason. In such event, the Stipulation shall become null and void and of no further force and effect, and shall be used or referred to for any purpose whatsoever.

17. **Use of Order.** This Order shall be of no force or effect if the Stipulation does not become Final and shall not be construed or used as an admission, concession, or declaration by or against the Releasees of any fault, wrongdoing, breach, or liability. Nor shall this Order be construed or used as an admission, concession, or declaration by or against Plaintiffs or the Class Members that their claims lack merit or that the relief

requested in the Complaint is inappropriate, improper, or unavailable, or as a waiver by any party of any defenses or claims he, she, or it might have.

18. **Continuance of Hearing.** The Court reserves the right to adjourn the date of the Fairness Hearing, and any adjournment thereof, without further notice to Class Members and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

Dated: New York, New York
September 4, 2007



DENISE COTE
United States District Judge